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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KENDOLL K. NALAN,

Plaintiff,

v.

ACCESS FINANCE, INC.,

Defendant.

Case No. 5:20-cv-02785

COMPLAINT FOR DAMAGES

**1. VIOLATION OF THE TELEPHONE
CONSUMER PROTECTION ACT, 47 U.S.C.
§227 ET SEQ.**

**2. VIOLATION OF THE ROSENTHAL FAIR
DEBT COLLECTION PRACTICES ACT,
CAL. CIV. CODE §1788 ET SEQ.**

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes KENDOLL K. NALAN (“Plaintiff”), by and through her attorneys, WAJDA LAW GROUP, APC (“Wajda”), complaining as to the conduct of ACCESS FINANCE, INC., (“Defendant”) as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. § 227 *et seq.* and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”) pursuant to Cal. Civ. Code §1788 *et seq.*, for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the TCPA. Subject matter jurisdiction is conferred upon this Court by 47 U.S.C. §227, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1367, because it arises out of the common nucleus of operative facts of Plaintiff's federal question claims.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Plaintiff resides in the Northern District of California and a substantial portion of the events or omissions giving rise to the claims occurred within the Northern District of California.

PARTIES

4. Plaintiff is a consumer over-the-age of 18, residing in San Jose, California, which is located within the Northern District of California.

5. Defendant is engaged in the business of offering loans and collecting or attempting to collect, directly or indirectly, debts owed or due using the mail and telephone from consumers across the country, including consumers located in the State of California. Defendant is a corporation organized under the laws of the State of California and its principal place of business is located at 3415 S. Sepulveda Blvd., Suite 410, Los Angeles, California 90034.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

7. Several months ago, Plaintiff obtained a line of credit from Defendant to finance the purchase of her personal automobile, a 2004 Honda Accord.

1 8. Plaintiff experienced financial hardship and began falling behind on her scheduled
2 payments to Defendant, creating an outstanding financial obligation (“subject consumer debt”).

3 9. Around February of 2019, Plaintiff began receiving unwanted collection calls to her cellular
4 phone, (408) XXX-4274, from Defendant.

5 10. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and
6 operator of the cellular phone ending in 4274. Plaintiff is and always has been financially
7 responsible for the cellular phone and its services.

8 11. Defendant has primarily used the phone number (310) 873-9592 when placing calls to
9 Plaintiff’s cellular phone. Upon belief, Defendant has used additional phone numbers as well.

10 12. Upon information and belief, the above-referenced phone number is regularly utilized by
11 Defendant during its debt collection activities.

12 13. During answered calls from Defendant, Plaintiff experiences a noticeable pause, lasting a
13 handful of seconds in length, and has to repeatedly say “hello” before a live representative begins
14 to speak.

15 14. Upon speaking with Defendant, Plaintiff was informed that Defendant was seeking to
16 collect upon the subject consumer debt.

17 15. Defendant’s harassing collection calls caused Plaintiff to demand that Defendant cease
18 contacting her.

19 16. Defendant willfully ignored Plaintiff’s demands and continued placing phone calls to
20 Plaintiff’s cellular phone.

21 17. Plaintiff’s co-signer is also receiving collection calls from Defendant.

22 18. Moreover, even after Plaintiff become current on her payments to Defendant, Plaintiff and
23 her co-signer continued to receive phone calls from Defendant.

1 19. Plaintiff has received not less than 20 phone calls from Defendant since demanding that it
2 stop contacting her.

3 20. Frustrated over Defendant's conduct, Plaintiff spoke with Wajda regarding her rights,
4 resulting in expenses.

5 21. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

6 22. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not
7 limited to: invasion of privacy, aggravation that accompanies collection telephone calls, emotional
8 distress, increased risk of personal injury resulting from the distraction caused by the calls,
9 increased usage of her telephone services, loss of cellular phone capacity, diminished cellular phone
10 functionality, decreased battery life on her cellular phone, and diminished space for data storage on
11 her cellular phone.
12

13
14 **COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

15 23. Plaintiff repeats and realleges paragraphs 1 through 22 as though fully set forth herein.

16 24. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their
17 cellular phone using an automatic telephone dialing system ("ATDS") without their consent. The
18 TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as "equipment which has the capacity...to
19 store or produce telephone numbers to be called, using a random or sequential number generator;
20 and to dial such numbers."
21

22 25. Defendant used an ATDS in connection with its communications directed towards
23 Plaintiff's cellular phone. During answered calls from Defendant, Plaintiff experienced a noticeable
24 pause lasting a handful of seconds in length, and had to repeatedly say "hello" prior to being
25 connected with a live representative, which is instructive that an ATDS was being utilized to
26 generate the calls. Moreover, the nature and frequency of Defendant's contacts points to the
27 involvement of an ATDS.
28

26. Defendant violated the TCPA by placing *at least* 20 phone calls to Plaintiff's cellular phone using an ATDS without her consent. Any consent Plaintiff may have given to Defendant by virtue of incurring the subject consumer debts was explicitly revoked by her demands that it cease contacting her.

27. The calls placed by Defendant to Plaintiff were regarding business transactions and not for emergency purposes as defined by the TCPA under 47 U.S.C. § 227(b)(1)(A)(i).

28. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff KENDOLL K. NALAN, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff; and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

29. Plaintiff restates and realleges paragraphs 1 through 28 as though fully set forth herein.

30. Plaintiff is a "person" as defined by Cal. Civ. Code § 1788.2(g).

31. The subject consumer debt is a "debt" and "consumer debt" as defined by Cal. Civ. Code § 1788.2(d) and (f).

32. Defendant is a "debt collector" as defined by Cal. Civ. Code § 1788.2(c).

a. Violations of RFDCPA § 1788.17

33. The RFDCPA, pursuant to Cal. Civ. Code § 1788.17 states that “Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Section 1692b to 1692j [of the Fair Debt Collection Practices Act (“FDCPA”)], inclusive of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code.”

i. Violations of the FDCPA §1692c and §1692d

34. The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector from engaging “in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” §1692d(5) further prohibits, “causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.”

35. Defendant violated §1692c(a)(1), d and d(5) when it repeatedly called Plaintiff after being notified to stop. This behavior of systematically calling Plaintiff’s cellular phone on a systematic basis in spite of her demands was harassing and abusive. The frequency and nature of the calls shows that Defendant willfully ignored Plaintiff’s pleas with the goal of annoying and harassing Plaintiff. The harassing nature of Defendant’s conduct is highlighted by the fact that it continued placing collection calls to Plaintiff and Plaintiff’s co-signer even after Plaintiff was current on her payments to Defendant.

36. Defendant was notified by Plaintiff that its calls were not welcomed. As such, Defendant knew that its conduct was inconvenient and harassing to Plaintiff.

ii. Violations of the FDCPA § 1692e

37. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

1 38. In addition, this section enumerates specific violations, such as:

2 “The use of any false representation or deceptive means to collect or attempt to
3 collect any debt or to obtain information concerning a consumer.” 15 U.S.C.
4 §1692e(10).

5 39. Furthermore, Defendant violated §1692e and e(10) when it used deceptive means to collect
6 and/or attempt to collect the subject consumer debts. In spite of the fact that Plaintiff demanded
7 that it stop contacting her, Defendant continued to contact her. Instead of putting an end to this
8 harassing behavior, Defendant placed repeated calls to Plaintiff’s cellular phone in a deceptive
9 attempt to force her to answer its calls and ultimately make a payment. Through its conduct,
10 Defendant misleadingly represented to Plaintiff that it had the legal ability to contact her and her
11 co-signer even after Plaintiff demanded that Defendant cease contacting her.

12 **iii. Violations of FDCPA § 1692f**

13 40. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using “unfair or
14 unconscionable means to collect or attempt to collect any debt.”

15 41. Defendant violated §1692f when it unfairly and unconscionably attempted to collect on the
16 subject consumer debt by repeatedly calling Plaintiff after being notified to stop. Attempting to
17 coerce Plaintiff into payment by placing voluminous phone calls without her permission is unfair
18 and unconscionable behavior. These means employed by Defendant only served to worry and
19 confuse Plaintiff.
20

21 42. Defendant willfully and knowingly violated the FDCPA. Defendant continued to call
22 Plaintiff’s cellular phone after she specifically asked it to stop contacting her. Defendant’s willful
23 and knowing violations of the FDCPA should trigger this Honorable Court’s ability to award
24 Plaintiff statutory damages of up to \$1,000.00, as provided under Cal. Civ. Code § 1788.30(b).
25

26 43. As plead in paragraphs 20 through 22, Plaintiff has been harmed and suffered damages as
27 a result of Defendant’s illegal actions.
28

1 WHEREFORE, Plaintiff KENDOLL K. NALAN, respectfully requests that this
2 Honorable Court enter judgment in her favor as follows:

- 3 a. Declare that the practices complained of herein are unlawful and violate the aforementioned
4 statute;
- 5 b. Award Plaintiff actual damages, in an amount to be determined, pursuant to Cal. Civ. Code
6 § 1788.30(a);
- 7 c. Award Plaintiff statutory damages up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- 8 d. Award Plaintiff costs and reasonable attorney fees as provided pursuant to Cal. Civ. Code
9 § 1788.30(c); and
- 10 e. Award any other relief as the Honorable Court deems just and proper.

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12 Dated: April 21, 2020

Respectfully submitted,

13 By: /s/ Nicholas M. Wajda
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